

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

REPLY COMMENTS of ADTRAN, INC.

ADTRAN, Inc. (“ADTRAN”) files these Reply Comments in response to some of the initial comments on the Commission’s Further Notice of Proposed Rulemaking with regard to the repurposing and refinement of the Universal Service Fund to support broadband deployment to currently unserved areas.¹ In its Initial Comments, ADTRAN lauded the Commission for taking the initial, comprehensive steps to resolve the longstanding issues related to various

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 76 *Federal Register* 78384 (December 16, 2011) (hereafter cited as “*Order and Further NPRM*”).

subsidy and intercarrier compensation systems. ADTRAN made several suggestions as to how the Commission could adopt measures that would maximize the goal of deploying robust broadband to all Americans as quickly and efficiently as possible. Other commenters apparently sought to advance their parochial interests, and ADTRAN addresses their comments below.

The Commission Should Reject Requests to Relax the Performance Standards to make it Easier for Wireless Service Providers to Bid in CAF Phase II

In the *Order and Further NPRM* the Commission adopted minimum performance requirements for broadband service that would be subsidized by the Connect America Fund (“CAF”) – 4 Mbps downstream, 1 Mbps upstream, with latency suitable for real-time applications and services such as VoIP, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas.² A few commenters urged the Commission to lower those standards in order to facilitate bidding by wireless service providers in CAF Phase II for those areas in which the incumbent Eligible Telecommunications Carrier (“ETC”) declined the state-wide, model-determined support.³

² *Order and Further NPRM* at ¶ 22.

³ *E.g.*, CTIA at pp. 13-14:

Providing greater flexibility in the required performance characteristics may be central to the ability of the Commission to achieve the objective of “yield[ing] greater coverage at acceptable broadband performance standards.” It is particularly important that these modified performance standards do not preclude or dissuade meaningful wireless provider participation. (citations omitted)

See also, T-Mobile at fn. 23 (“In addition, mobile wireless carriers should not be subject to the same speed standard and other performance requirements as incumbent wireline carriers that accept statewide commitments.”); US Cellular at p. 43.

ADTRAN urges the Commission to reject these requests to reduce the performance standards in any such reverse-auctions to accommodate wireless broadband. The Commission did not set these standards in a random fashion – rather, the Commission selected these minimum requirements in order to allow customers to have reliable access to streaming video and other desirable services.⁴ Lesser performance minimums thus would not be “acceptable.”

In addition, none of the commenters that advocated lower minimum standards proffered any -- much less any non-arbitrary -- means by which the Commission could quantify the “value” of mobility (or any other characteristics) so as to be able to make a valid comparison between different bids. A reverse-auction constructed in such an arbitrary fashion would invite challenges and litigation, thus delaying the deployment of broadband. ADTRAN acknowledges that many consumers desire mobile broadband services, and ADTRAN supported the separate Mobility Fund to subsidize mobile broadband.⁵ However, if a mobile wireless provider also wants to obtain a subsidy from a CAF Phase II auction, it must be able to offer consumers the same minimum performance characteristics that apply to the other competing technologies. Lowering the bar for wireless is not technology neutral.

In a similar vein, a couple of the commenters urge the Commission to subsidize multiple providers in each market.⁶ That is a luxury we cannot afford, insofar as the costs for those

⁴ *Order and Further NPRM* at ¶¶ 93-94.

⁵ ADTRAN Comments at p. 5. *See also*, ADTRAN Additional Comments in WC Docket No. 10-90 *et al.*, filed August 24, 2011, at pp. 2-4.

⁶ US Cellular at pp. 20-25 and 38-39; USA Coalition at p. 3 and pp. 8-12 (“However, the Act does not authorize the Commission to identify independent goals (*i.e.*, ubiquitous availability of fast broadband information services) and then design the distribution mechanism to achieve

subsidies, which would necessarily be imposed on current subscribers, would end up driving many of those subscribers off the network. Such an outcome is inconsistent with the fundamental goal of universal service – affordable access to advanced telecommunications and information services should be provided in all regions of the Nation.⁷ Moreover, any such synthetic competition does not provide sustainable or long-term benefits to consumers. The Commission’s decision to subsidize no more than one service provider in a territory was the correct one.

The Commission Should Adopt Consistent and Meaningful Measurement Standards

In its Initial Comments in this proceeding, ADTRAN urged the Commission to rely on the extensive work that industry, academia and others have already undertaken, and are continuing to undertake, to measure broadband performance in a consistent and meaningful manner.⁸ Several other commenters similarly suggested that the Commission should adopt uniform, standardized measurement procedures relying on the previous collaborative efforts.⁹ While performance measurement methodologies should be “technology neutral,” they can be adapted to the performance requirements of different broadband access services. By way of example, a measurement methodology that specifies mobility testing for mobile broadband

those goals at the expense of achieving the Act’s mandates in a manner that facilitates competition.”).

⁷ 47 U.S.C. § 254(b). While US Cellular cites the *Alenco* decision to try to establish a “portability” requirement for universal service subsidies (*Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000)), the language they rely on is dicta (and they overstate that language as well).

⁸ ADTRAN Comments at pp. 6-10.

⁹ E.g., USTA Comments at pp. 10-13, Verizon Comments at pp. 21-23; Windstream Comments at pp. 7-13, Satellite Broadband Providers Comments at pp. 18-19.

access services would not be appropriate for fixed access services. On the other hand, all fixed broadband subsidy recipients should use the same measurement methodologies to ensure that a consumer will reliably and consistently experience data rates meeting the prescribed minimum performance standards.

In contrast, a couple of the commenters suggest that wireless broadband service providers should be subject to more relaxed measurement standards. US Cellular suggested that:

The use of an average speed or average throughout methodology would account for the characteristics of mobile networks more reasonably and accurately than imposing a uniform speed methodology that would apply throughout a mobile carrier's service area, including at the cell edge.¹⁰

CTIA similarly urged the Commission to adopt “the current practice of reporting peak and average data rates to customers.”¹¹ ADTRAN disagrees with these proposals for less robust measurement standards for wireless services, at least in the case where different technologies will be competing for the same CAF Phase II subsidies. Both the Commission and consumers should be able to make “apples-to-apples” comparisons of broadband performance.

The Commission Should Reject the Request to Accelerate Deployment Schedules

In the *Order and Further NPRM*, the Commission adopted milestones to ensure that broadband services subsidized by the Connect America Fund would be deployed in a timely manner. Specifically, by the end of the third year, the price cap CAF recipients must offer at least 4 Mbps/1 Mbps broadband service to at least 85 percent of their high-cost locations, and by the end of the fifth year, those CAF recipients must offer at least 4 Mbps/1 Mbps broadband

¹⁰ US Cellular Comments at p. 45.

¹¹ CTIA Comments at p. 10.

service to all supported locations. In responding to the request for comment on whether the Commission should relax the standards for any CAF Phase II reverse auctions, the American Cable Association suggested that even more stringent deployment milestones should be imposed:

However, after discussions with ACA members on their deployment experiences, and because census tracts are relatively compact service areas, the Commission should mandate by all recipients of support in price cap areas deployment at these speeds [4 Mbps downstream/1 Mbps upstream] to 95 percent of locations within a two year period – as opposed to the five years proposed by the Commission.¹²

While ADTRAN agrees that some flexibility may be needed at the final milestone in order to accommodate particularly remote and/or difficult to serve locations, ADTRAN disagrees with the claim that two years would be an adequate timeframe for deployment of broadband services for 95% of the customer locations.

The experiences of the American Cable Association members with regard to broadband deployment cannot be extrapolated to other service providers. In the case of cable service providers, deploying broadband over their existing facilities is a relatively quick process, because it involves the installation of electronics and the re-allocation of previously deployed capacity. For other technologies, in contrast, construction of new facilities requires significant planning, engineering, coordination with other utilities and receipt of government approvals, even before actual construction can begin.¹³ The two year deadline proposed by the American Cable Association would be too stringent under these circumstances.

¹² American Cable Association Comments at p. 30.

¹³ See Windstream Comments at pp. 30-31. See also, <http://www.kansascity.com/2012/01/17/3376648/dispute-over-how-wires-are-hung.html#storylink=cpy> (Google deployment of fiber in Kansas City delayed by dispute over where to hang Google's fiber on utility poles).

The Commission Should Reject Requests for Even Greater Reductions in the Areas Eligible for Support

Under the rules and proposed rules in the *Order and Further NPRM*, subsidies would not be available in any areas served by an “unsubsidized competitor.” In its Initial Comments, ADTRAN explained that the Commission’s definition of “unsubsidized competitor” was too narrow, insofar as it excluded service providers subsidized by programs other than high-cost support, such as the BIP or BTOP subsidy funds created by the stimulus legislation.¹⁴ In contrast, a couple of the commenters would restrict even further the areas eligible for support.

Time Warner Cable would lower the threshold so that if an unsubsidized competitor was offering the requisite level of broadband service to 75% or more of the households in the area, no support would be available.¹⁵ The American Cable Association would go even further by proposing that service to a majority of the locations within an area by an unsubsidized competitor would suffice to disqualify that area for Connect America Fund support.¹⁶ Such limitations run the risk of creating significant pockets of areas unserved by the kind of advanced broadband services deemed essential by the Commission. The Commission should therefore reject these proposals to further restrict the availability of broadband subsidies.

The Commission Should Provide CAF Assistance for a Ten-Year Term

In its Initial Comments in this proceeding, ADTRAN urged the Commission to adopt the same ten-year terms for support for both the Mobility Fund and the Connect America Fund

¹⁴ ADTRAN Comments at fn. 19.

¹⁵ Time Warner Cable Comments at p. 14.

¹⁶ American Cable Association Comments at pp. 9-10.

Phase II.¹⁷ The American Cable Association, in contrast, suggested that for CAF Phase II, support should be provided for a five-year term with no right to renewal.¹⁸ US Cellular likewise advocates a five-year term, although they would allow for a renewal expectancy.¹⁹ ADTRAN believes that the same factors that support the need for a ten-year term in the context of mobile broadband deployment – *e.g.*, the extensive investment in new facilities and the need to attract significant amounts of capital²⁰ – apply as well in the context of fixed broadband deployments. ADTRAN thus continues to urge the Commission to apply a ten-year term in both cases.

The Commission Should Not Limit the Eligibility of Incumbent ETCs to Bid even if they Decline State-wide Model-Determined Funds

One of the commenters suggested that the Commission should not allow an Incumbent ETC that declined the state-wide, model-determined support to be eligible to bid in the resulting reverse auction.²¹ As ADTRAN explained in its Initial Comments, an Incumbent ETC is likely to have legitimate reasons for declining the model-determined support. But they could still be the low-bidder in a resulting reverse-auction, thus helping to maximize the broadband deployment supported by the fixed amount of funding in the Connect America Fund. Moreover,

¹⁷ ADTRAN Comments at pp. 18-19.

¹⁸ American Cable Association Comments at p. 3.

¹⁹ US Cellular Comments at p. 41.

²⁰ *Cf.*, US Cellular Comments at p. 35:

Especially in the context of the Commission's proposed Phase II reverse auctions, fixed terms shorter than 10 years would make it extremely difficult for smaller wireless carriers and regional carriers serving rural areas to attract sufficient capital to assist in meeting network deployment obligations mandated by the Commission.

²¹ US Cellular Comments at p. 44.

there is no strategic benefit to an Incumbent ETC attempting to “cherry pick” only limited areas by declining the state-wide support, since it has no guarantee that it would win any resulting reverse-auction.²² The Commission should therefore not limit the ability of an Incumbent ETC to bid in any reverse-auctions.

* * * * *

ADTRAN urges the Commission to move forward expeditiously with the reformation of the universal service subsidy programs consistent with ADTRAN’s Initial Comments and these Reply Comments. Such a course of action will well serve the public interest by fostering the rapid and sustainable deployment of robust broadband to presently unserved locations.

Respectfully submitted,

ADTRAN, Inc.

By: _____/s/
Stephen L. Goodman
Butzel Long Tighe Patton, PLLC
1747 Pennsylvania Ave, NW, Suite 300
Washington, DC 20006
(202) 454-2851
SGoodman@bltplaw.com

Dated: February 17, 2012

²² E.g., USTA Comments at p. 23.